

SECTION III

RESPONSIBILITIES

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Among the entities / persons involved in the compliance part of the tax credit program are the Michigan State Housing Development Authority (MSHDA), the project owner, and the management company. Their various responsibilities are set forth below.

Part 300 The Michigan State Housing Development Authority

The Michigan State Housing Development Authority allocates and administers the tax credit program for the State of Michigan. The responsibilities of MSHDA are as follows:

- A. Issue IRS Form 8609 (Low Income Housing Certification)** – See Part 235 (IRS 8609) for more information.
- B. Prepare Regulatory Agreement / Restrictive Covenants** – MSHDA will prepare a Regulatory Agreement (Land Use Restrictive Agreement) prior to issuance of the IRS Form 8609. The document must be recorded by the owner. See Part 240 (Restrictive Covenant) for more information.
- C. Review Owner Certification of Continuous Compliance, Form LIHTC 020** – see Part 330 (Owner Certification of Continuous Compliance) for more information
- D. Review Tenant Income and Rent Report, Form LIHTC 021** –Part 340 (Tenant Income and Rent Report) for more information
- E. Conduct On-Site Monitoring** – MSHDA will conduct in-depth on-site compliance monitoring (including tenant file review and physical inspections) of each LIHTC project at least once every three years. For more information about on-site monitoring, see Part 765 (Auditing of Tenant / Unit Files by MSHDA) and Part 770 (Physical Inspections).
- F. Notify IRS of Noncompliance** – MSHDA will notify the IRS of instances of potential noncompliance. For information on noncompliance, see Section XI (Noncompliance).
- G. Record Retention** – MSHDA will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. MSHDA will retain records of noncompliance or the failure to certify compliance for six years after its filing an IRS form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

- H. Conduct Training and Provide Continuing Education** – MSHDA will conduct or arrange training conferences and will disseminate information regarding their dates and locations. MSHDA will offer continuing education to assist the owner, the management company, and the on-site personnel in complying with federal regulations and state rules. LIHTC staff can be contacted at:

Low Income Housing Tax Credit Program
Michigan State Housing Development Authority
735 E. Michigan Avenue, PO Box 30044
Lansing, MI 48909
Telephone (517) 241-2560 [Compliance Monitoring]
Telephone (517) 373-6007 [LIHTC Allocation]
Fax: (517) 241-8471
www.michigan.gov/mshda

- I. National Council of State Housing Agencies** – Congress has delegated responsibility for administering the LIHTC Program to states, recognizing that each state is better able than the federal government to address the low income housing needs unique to its citizens. Within the statutory and regulatory parameters set forth by the Congress and the Internal Revenue Service, the states have developed a variety of practices for allocating Housing Credits and Monitoring the results developments for compliance

Since 1992, the states, through the National Council of State Housing Agencies (NCSHA), have developed several “recommended practices” to strengthen state administration of the Credit. Consistency in some procedures and reporting among the states strengthens the LIHTC Program by streamlining and simplifying agency reviews and creating efficiency and clarity for developers and other Housing Credit Industry professionals. In other areas, uniformity among the states is impractical or inconsistent with state’s need for flexibility to respond to their unique priorities. All states require Housing Credit development owners to use certain forms for compliance reporting. These forms differ from state to state. NCSHA has developed standardized compliance forms among the states in order to create efficiency for developers and other Housing Credit industry professionals. Throughout this compliance manual, several NCSHA standardized forms and reporting practices will be discussed and are included in **Appendix L**.

- J. Subcontracting of Compliance Monitoring Functions** – MSHDA, in its sole discretion, may retain an agent or private contractor to perform some of the responsibilities listed above. In this event, MSHDA uses reasonable diligence to ensure that the agent or private contractor(s) properly performs the delegated monitoring functions. MSHDA will retain responsibility for notifying the IRS of any noncompliance of which it becomes aware.

In exchange for the LIHTC benefits, the owner must adhere to certain requirements and accept responsibilities, outlined as follows:

A. The project owner should be knowledgeable about the following:

1. The credit year of the project and the date of allocation.
2. The date(s) the building(s) was placed in service. (The placed in service date is the date of first possible occupancy, not necessarily actual occupancy – generally, this is the certificate of occupancy date.)
3. If a rehabilitation project,
 - a. whether or not tenants were required to move out during rehab; and
 - b. whether or not the building was occupied during the rehab.
4. The number of buildings in the project.
5. the minimum set-aside elected
 - a. 20/50 or
 - b. 40/60
6. The percentage of the residential units in the project that are tax credit eligible, or the percentage of floor space that is tax credit eligible.
7. The year that credit was first claimed.
8. The terms under which the tax credit reservation was made, including statutory set-aside, deeper targeting agreements, etc. For more information, see **Section IX (Unit-, Building-, and Project-Level Rules)**.
9. The Building Identification Number (BIN) for each building in the project.

B. Comply with terms of LIHTC Allocation Agreement – For more information regarding the compliance monitoring requirements for representations made by project owners in their applications and allocation agreements, see Part 440 (Credit Period).

C. Meet Project's Initial Eligibility Requirements

1. Submit compliance monitoring fees as described in **Part 725 (Compliance Monitoring Fees)**.
2. Submit a copy of the signed and dated IRS Form 8609 for each building to MSHDA, with Part II completed, at the same time the monitoring forms for the first year of the compliance period are submitted. See **Part 235 (IRS 8609)**.
3. If the composition of the ownership entity changes, the owner must provide details and include a sales agreement and a copy of the bond if the property has been sold. For more information on project sales, see **Section XI (Noncompliance)**.

- D. Prepare and Submit Annual Certifications** – The owner is responsible for reporting the project's status, condition, and compliance with program requirements to MSHDA annually in the form and manner MSHDA specifies. Two important components of the annual certification requirements are as follows:
1. **Owner Certification, Form LIHTC 020** – See **Part 330 (Owner Certification of Continuous Compliance)** for a detailed description of this requirement.
 2. **Annual Tenant Income and Rent Report, Form 021** – See **Part 340 (Tenant Income and Rent Report)** for a detailed description of this requirement.
- See **Part 715 (Annual Compliance Certifications)** for more information.
- E. Train On-site Personnel** – The owner must make certain that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the project.
- F. Ensure Proper Maintenance** – The Owner is responsible to ensure that the LIHTC project is maintained in a decent, safe, and sanitary condition. Failure to do so is a reportable act of noncompliance. For more information, see Part 770 (Physical Inspections of LIHTC Projects by MSHDA) and Part 1020 (Physical Condition Standards).
- G. Record-Keeping and Record Retention** – The owner of any building for which credit has been or is intended to be claimed must keep records that include all of the information set forth below, on a building by building basis, for a minimum of **six years** after the due date (with extensions) for a filing the federal income tax return for that year. However, the records for the first year of the credit period must be kept for six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building (i.e. first year records must be kept for at least **21 years**).

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
2. The percentage of residential rental units in the buildings that are low-income units;
3. The rent charged on each residential rental unit in the building and the applicable utility allowance;
4. The number of occupants in each low-income unit;
5. The low income unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates and move-out dates for all tenants, including market rate tenants);
6. The income certifications of each eligible tenant;
7. Documentation to support each eligible tenant's income certification;
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
9. The character and use of the nonresidential portion of any building included in the project's eligible basis (for example, any community building, recreational facility, etc. available to all tenants and for which no separate fee is charged).

- H. **Maintain a Development File** – See Part 350 (Development File).
- I. **Maintain a Tenant / Unit File for Each Unit in the Project** – A separate file containing the documentation used to certify the eligibility of tenants to reside in an LIHTC unit must be maintained for each tenant. The Tenant / Unit File requirements are outlined in Part 755 (Tenant / Unit File).
- J. **Prepare and Submit Low Income Housing Credit (IRS Form 8586)** – One IRS Form 8586 must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. IRS Form 8586 must be attached to IRS Form 8609 and Schedule A (IRS Form 8609) and submitted annually with the owner's federal tax return. A sample copy of the form is included in **Appendix I**.
- K. **Administration and Notification** – The owner must notify MSHDA immediately in writing of any changes in the ownership composition or in the management agent, such as name, address, and telephone number.

Part 320	Management Personnel	Company	and	On-Site
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The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartments units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information, as needed, to MSHDA and submit all required reports and documentation in a timely manor.

The ultimate responsibility for compliance and proper administration of the LIHTC program is the owner's. Compliance with the requirements of Section 42 is the responsibility of the owner of the building with an allocation of credit. The Authority's obligation to monitor for compliance with the requirements of Section 42 does not make the Authority liable for the owner's noncompliance.

Part 330	Owner Certification of Continuous Compliance (LIHTC Form # 020)
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The owner of any building(s) / project which has claimed or plans to claim low income housing tax credit must certify to MSHDA, under penalty of perjury, **annually**, for each year of the compliance period, on MSHDA's Owner Certification (of Continuing Program Compliance) form, for the preceding 12 month period:

- A. The project meets the requirements of: either the 20/50 test set forth at Section 42(g)(1)(A) of the code, or the 40/60 test set forth at Section 42(g)(1)(B) of the Code, whichever is applicable;
- B. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the project, or that there was a change and a description of the change;
- C. The owner has received an annual income certification from each low income tenant and documentation to support that certification;
- D. Each low income unit in the project was rent restricted in accordance with the applicable provisions of Section 42(g) of the Code;
- E. All units in the project were available for use by the general public and were used on a non-transient basis (except for permissible transitional housing for the homeless);
- F. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
- G. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project;
- H. There has been **no change in the eligible basis** (as defined in Section 42(d) of the Code) of any building in the project since last certification submission;
- I. All tenant facilities in each building in the project that have been included in eligible basis are provided on a comparable basis to all tenants without additional charge;
- J. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income;
- K. If the income of any tenant of a low income unit increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to tenants having a qualifying income:

- L. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989);
- M. If applicable, an extended low income housing commitment as described in Section 42(h)(6) of the Code was in effect;
- N. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified non-profit organizations” under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code; and
- O. There have been no change in the ownership of the project or any of its buildings, or, if there has been a change, a description of the change has been provided to the LIHTC Section of MSHDA in writing.

Part 340 :: Tenant Income and Rent Reports
(LIHTC Form # 021)

Compliance monitoring on a building-by-building basis. A separate Form LIHTC 021 must be submitted for each building. This form is prepared annually and details the following.

- The number of qualifying low-income units;
- Information on each low-income tenant, including name, social security number, number of people in the household, and annual income;
- The number of bedrooms in each unit
- The rent charged for each unit
- The unit number, tenant name, move-in date, and move-out date for all tenants, including market rate tenants; and
- Such other information as is set forth on the form and required by MSHDA

An Owner Certification and a Tenant Income and Rent Report must be submitted to MSHDA for each year in which a project was in services or occupied for one day or more. The forms should not be completed prior to January 1, and must be received by MSHDA no later than February 1. Failure to submit legible and thoroughly completed Forms LIHTC 020 and 021 when they are due will be considered an act of noncompliance. Copies of these forms are included in [Appendix A](#). See [Part 735 \(Due Dates for Annual Compliance Certifications\)](#) for more information.

Owners must maintain a Development File that contains all pertinent documents for the project. MSHDA retains the right to inspect the Development File at any time. The Development File must contain:

- All approved tax credit applications together with applicable attachments;
- A recorded copy of the Regulatory Agreement / Restrictive Covenant (except for pre-1990 credit projects);
- For 1987-89 projects, election to calculate rent on a bedroom basis, if applicable;
- IRS Forms 8609 and 8586 for each building for each year credit is claimed;
- All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS, etc.);
- Documentation that the project complies with any statutory set-asides or Qualified Allocation Plan requirements. For more information, see **Section X (Federal and State Laws, Rules, etc.)**;
- An Annual Project Summary, Form LIHTC 042, for every year of the compliance period. For information regarding this report, see **Part 720 (Annual Project Summary Form)**. A sample copy of this form is included in **Appendix A**.
- Utility Allowance Documentation, Form LIHTC 043, for each utility allowance update or revision which must occur at least once per year. A sample copy of this form is included in **Appendix A**. For more information, see **Part 540 (Utility Allowance)**.
- A copy of the Annual Compliance Certifications (see Part 715) for each year of the compliance period.